Frequently Asked Questions (FAQ) – Credit Institutions REQ

This FAQ document clarifies the interpretation of specific questions as well as provide more information on the data being requested in particular sections within the REQ. Please go through this document prior to the completion and submission of the REQ. Any other questions which are not included in this document may be sent to caspar@fiumalta.org.

1. An entity obtained its MFSA licence in 2017 and only commenced its operations in 2019. When is the first REQ due for completion and submission?
   All individuals and entities carrying out any relevant financial business or relevant activity as defined in the PMLFTR are considered to be subject persons and are required to submit the REQ – irrespective of whether or not they have actually commenced operations. If operations have not commenced, an explanatory note should be included in the ‘General Remarks’ section on the first page of the REQ. In view of this, the first REQ will cover the period 1st January 2018 – 31st December 2018 and will be due to be filed in March 2019.

2. I am the MLRO of a company which obtained a MFSA licence in 2019. What should we do now?
   The MLRO should register on CASPAR and create a Subject Person. Guidance on the registration process is available on the FIAU website. Since the Company was licensed in 2019, the first REQ in this case will be due in 2020 and will cover the period 1st January 2019 to 31st December 2019.

3. I am a MLRO of a legal entity with no registered employees. How should I answer all employee-related questions in the REQ?
   All questions related to employees should be marked as ‘Not Applicable’.

4. In the case where an activity/product is listed in the REQ but is not relevant/applicable to the Subject Person, would a ‘0’ reply be sufficiently clear to indicate that a particular service/product/activity is not offered?
   Most of the questions have a ‘Not Applicable’ check box. This should be ticked in instances where the service/product/activity is not offered by the Subject Person. When a number/percentage is required to be input and the ‘Not Applicable’ option is not available, a ‘0’ value should be input.

5. Certain questions have a ‘Not Available’ tick box. When should this be used?
   The ‘Not Available’ tick box should be used in instances when the question is applicable to the Subject Person, however it has insufficient data/records to appropriately answer the question.

6. What is the meaning of the term ‘offshore’ in the REQ?
   The term offshore refers to jurisdictions that have distinctive characteristics such as low or zero taxation, tax secrecy and possibly lack of transparency. You are kindly requested to refer to the EU list of offshore jurisdictions/centres.

7. What are the ‘high risk industries’ referred to in the REQ?
   High risk industries should be defined by the Subject Person’s policies and procedures.
8. **REQ Question:** Please indicate total annual turnover according to the latest available audited financial statements and/or tax declaration.
   Our turnover is reported in a currency other than Euro. Shall we convert it to Euro?
   Yes. The applicable exchange rate as at the date of the audited financial statements should be used to convert the annual turnover to Euro.

9. **REQ Question:** Has your institution undergone changes in its ownership structure between January and December 2018?
   During the year ending 2018, there were changes in the share capital of the entity which however did not affect the ownership structure. How should we answer this question?
   If the change in share capital did not lead to a change in the ownership structure of the institution, then mark your answer as 'No'.

10. **REQ Question:** Please list the countries in which your institution has subsidiaries, branches, affiliates.
    ABC Bank Malta is a branch of ABC Bank Group. The Group has several branches and subsidiaries situated in different countries. For the purpose of this question, shall we mention the subsidiaries and branches of the group even though they are not branches/subsidiaries of ABC Malta Branch?
    No. The subsidiaries and branches of the group are not subsidiaries/branches of ABC Malta Branch and therefore should not be included in your response to this question.

    Is the above question referring only to banking subsidiaries/branches or is it also referring to other subsidiaries such as SPV companies?
    The question is only referring to banking subsidiaries/branches since it is for these branches that the Bank must ensure that AML/CFT legal obligations are safeguarded. Since SPV companies are not considered to be subsidiaries/branches of the bank these should be excluded for the purposes of answering this question.

11. **REQ Question:** Does your institution’s ownership structure contain shareholders/beneficial owners (“BOs”) for any or all of the following: where there are two (2) or more legal entities, a trust, a foundation, or a personal holding company?
    What is being understood by the term “a personal holding company”?
    A personal holding company is a corporate entity that holds shares (assets) on behalf of the company (Subject Person) filling in this REQ.

12. **REQ Question:** Please provide the % of staff outside the AML/CFT unit that completed AML/CFT training between January and December 2018.
    Can you define what is meant by staff outside the AML/CFT unit?
    Reference should be made to Chapter 7 of the Implementing Procedures, Part I which indicates that awareness and training shall be provided to employees whose duties include the handling of either relevant financial business or relevant activity.
13. **REQ Question:** *Are staff tested for knowledge retention following AML/CFT training and required to obtain a score over a specific threshold in order to pass?*

   Should we answer this question on 2018 or on the last 3 years as per other questions in this section?

   Since no references are made to previous questions, kindly reply in the context of 2018 only.

14. **REQ Question:** ‘*How many open cases resulted from suspicious transaction alerts over the last 6 months?’* What is meant by open cases?

   The words ‘open cases’ refer to internal cases/investigations that result from suspicious transaction alerts.

15. **REQ Question:** *How many alerts were generated by the AML/CFT unit’s automated monitoring system that have resulted in investigations in 2018?*

   On a daily basis, International Sanctions are uploaded on the bank’s core banking system which in turn automatically filters all inward and outward payments processed, blocking any transactions with similarities in names and references. Any such blocked transactions are then investigated and released manually for processing in case of false hits, while positive hits would be reported by raising STR’s through the appropriate channels. No delinquent transaction has yet been identified but a number of payments were blocked by the system and investigated. In this sense could you please advise what we should report?

   The number input in this field should reflect the total number of alerts that were raised by the system and resulted in an analysis/investigation by the Subject Person to be able to determine whether these should be cleared or whether they have to be escalated further.

   The section ‘Ongoing Monitoring’ refers to an automated monitoring system.

   In the case that the monitoring system is manual and not automated, should we answer the relevant questions based on the manual monitoring system or do these questions specifically relate to an automated system?

   These questions should be completed irrespective of the type of monitoring (automated or manual) implemented by the Subject Person.

16. **The REQ includes a section ‘Products and Services’ in which the Subject Person must declare total volume (#) and value (€) of each activity performed by the institution. Should the total % of all activities sum up to 100%?**

   Yes. The % sum of all activities should sum up to 100%.

   Some of activities can be placed under two different sub-sections, for instance Credit Cards/Prepaid Cards are also international wire transfers and transactional accounts are also international wire transfers. Should we duplicate the information in the above-mentioned sub-sections or should we select only one?

   You must distinguish between the services offered even though the medium of transfer might be the same. This will avoid duplication of information in the process. One should note that although services might be related to each other, they are not always one and the same. For instance, international wire transfers are considered to be a different service to credit cards since while credit cards may be used, amongst various other things, for international wire transfers, they are
not the product itself. Therefore in all instances, one has to determine the main activity and input the percentage in the respective sub-section. We believe that by adopting this reasoning, one will be in a better position to differentiate between the different services offered and avoid scenarios where the same service is inputted in different sub-sections.

17. Does the section ‘Products and Services’ require the results to be calculated according to the activities performed as at 31st December 2018 or to cover the volumes and values for the activity under each product reported for the full year?
This section is intended to provide an understanding of the areas the bank focuses on, in terms of value and volume. Calculations with regards to value should reflect the monetary value of each activity in Euros as at 31st December 2018 whereas in relation to the percentage volume, this should be determined over the whole span of 2018 and should reflect the number of transactions associated with a particular activity.

18. REQ Question: International wire transfers: an electronic transfer of funds, internationally, across a network administered by hundreds of banks across the globe: Volume (%)
All the transactions are done through wire transfers. Can you please confirm whether transfers between customers both having accounts with our bank should be taken into account?
In this case, should the transfers be carried out between customer accounts that are either within one of your bank’s Maltese branches or any other Maltese bank, then in that case the answer is ‘no’ as such transactions are not deemed to be ‘international wire transfers’. On the other hand, if a transfer is being carried out from/to your bank from/to another bank situated outside Malta, then such transfers should be considered as ‘international wire transfers’, the volume and value of which should therefore be inputted in answer to this question.

19. REQ Question: Currency exchange services: a business or financial institution that has the legal right to exchange one currency for another currency to its customers. It may be a stand-alone business or may be part of the services offered by a bank or other financial institution: Volume (%)
The Bank predominantly transacts in Euro. However, we sometimes buy other currencies to satisfy sporadic customers’ requests. How shall we report this?
You should report the number of instances (percentage of total transactions) in which transactions involve currency exchange.

20. REQ Question: Trading services: for own account or for account of customers, including but not limited to in: Money market instruments; foreign exchange; financial futures and options; exchange and interest-rate instruments; transferable securities. Services provided in the trade or exchange of financial instruments: Volume (%)
The bank holds investments only for its own accounts which it trades freely on the exchange market. How should we report this?
Any trading transactions (even for own account) should be reported as a percentage of the total number of transactions.
21. **REQ Question:** Please indicate how many withdrawals in cash (coins and/or notes) amounting to €10,000 or more were processed by your institution in 2018 on behalf of customers: Volume should the answer include encashed cheques of €10k and over? Example: if a client hands a cheque to beneficiary/supplier who in turn cashes it, is this reportable? Yes it should be considered as a cash withdrawal.

22. **REQ Question:** Please list the total number of customers as at 31/12/2018. Do customers refer to beneficial owners? No, this question relates to the total number of customers serviced by your institution (legal and natural persons).

23. **REQ Question:** Does the above number represent, to the best of your/your institution’s ability, the distinct number of customers, or is it known that it contains duplicates? What is the definition of ‘duplicate’ in this case? By 'duplicate' we mean situations in which the institution calculates the number of customers on the number of services offered rather than the number of unique relationships.

24. **REQ Question:** Breakdown of the total number of customers: Please list the % of legal persons of the total customers. Should we include a holding and trading company as one legal entity? Should the service be offered to both the holding and the trading company, these should be regarded as two separate legal entities for which you are providing the service; therefore the total number of customers is two. If they form part of the same group but the Subject Person is offering the service to only one of the two, the customer in this case is one.

Do trusts fall under the definition of ‘legal persons’? Yes, all customers other than natural persons should be captured in the definition of ‘legal person’.

25. **REQ Question:** ‘Breakdown of the legal persons identified above: Please list the % of customers with an ownership structure that includes offshore vehicles or trusts or other legal arrangements including bearer shares, fiduciary deposits and foundations of the total number of legal persons as indicated in previous question.’ Should the answer include Maltese trusts? All trusts and other legal arrangements including bearer shares, fiduciary deposits and foundations should be included in the answer, irrespective of whether these are Maltese or otherwise.
26. The REQ includes a section relating to the ‘Politically Exposed Persons ("PEPs")’. Are the figures required for purely PEPs as listed in the LN 372 of 2017 only or should also include related persons?
   The report figure should also consider close associates and family members.

27. The REQ includes a section relating to the ‘Domicile of BOs’. How should we report cases where BOs of ’legal persons’ are from more than one jurisdiction?
   If you have 50 legal customers, each having 2 UBOs, you will have a total of 100 UBOs. So percentages should reflect the total number of UBOs and not the total number of customers.

   If for example: out of the 100 UBOs, 50 are domiciled in Malta, 20 domiciled in an EU/EEA jurisdiction, 25 are domiciled in a non-EU/non-EEA and 5 domiciled in a high risk jurisdiction. The following questions should be answered as follows:

<table>
<thead>
<tr>
<th>What percentage of customer BOs are domiciled in Malta?</th>
<th>50%</th>
</tr>
</thead>
<tbody>
<tr>
<td>What percentage of customer BOs are foreign and are domiciled in an EU or EEA jurisdiction outside Malta?</td>
<td>20%</td>
</tr>
<tr>
<td>What percentage of customer BOs are foreign and are domiciled in a non-EU or non-EEA jurisdiction outside Malta?</td>
<td>25%</td>
</tr>
<tr>
<td>What percentage of customer BOs are domiciled in a high risk jurisdiction (as defined by the institution’s policies and procedures)?</td>
<td>5%</td>
</tr>
</tbody>
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28. REQ Question: ‘Of the total number of customers, what percentage were onboarded on a non-face-to-face basis. [Relates to Financial Sector]’
   In the case of corporate customers, where the CDD on beneficial owners was carried out on a non-Face-to-Face, should such beneficial owners be captured under this section since these are not considered as ‘customers’?
   This section applies to customers and not physical persons. Legal entities may be onboarded on a face-to-face basis through agents (acting on behalf of the company, if met physically) or onboarded on a non-face-to-face basis.
29. We are ABC Bank completing the section ‘Transactions/Payments’ within the REQ. Should we report the volume and value of the transactions executed in 2018 according to the resident status of the customer or to the jurisdiction from/to where the funds were transferred?

When reporting the volume and value of transactions it is the jurisdiction in which the customer is domiciled that must to be taken into consideration rather than the jurisdiction from/to where the funds are transferred.

**Example 1:** A customer is domiciled in Turkey (a non-EU or a non-EEA jurisdiction) and makes a transfer from his account, held with ABC Bank in Malta, to his account held with another bank in Germany.

This should be regarded as an international payment (non-EU/non-EEA) and reported as an outgoing payment to a customer domiciled in non-EU/non-EEA jurisdiction.

**Example 2:** One of the bank’s clients, a non-EU domiciled customer, receives a payment in his account held with ABC Bank, from an entity domiciled in the EU.

In this scenario, the institution is receiving payments from customer domiciled in EU/EEA jurisdiction and thus this should be regarded as an incoming payment from customer domiciled in EU or EEA jurisdiction.

**Example 3:** A non-EU domiciled customer, who holds funds with ABC Bank, affects an outgoing payment to an EU-domiciled account.

In this scenario, the institution is making an ‘international payment activity’ and is sending payments from a customer domiciled in non-EU/non-EEA jurisdiction to an EU-domiciled customer and thus under the REQs, this should be regarded as an ‘outgoing payment to customer domiciled in EU or EEA jurisdiction’.

In addition to the above, kindly avoid having any transactions/payments/transfers input in duplicate i.e. should a payment be incoming/outgoing from/to a non-EU jurisdiction while at the same time the jurisdiction is considered a high-risk jurisdiction while at the same time the jurisdiction is considered a non-EU jurisdiction while at the same time the jurisdiction is considered a high-risk jurisdiction, then the fact that the remitter/beneficiary is domiciled in a high-risk jurisdiction, this should take prevalence over the fact that the jurisdiction is also considered a non-EU. The data input in relation to this payment should be input solely in the ‘high-risk’ jurisdiction fields.

30. **The Subject Person is required to indicate the percentage of transfers of funds amounting to €500,000 or more which were carried out on behalf of private customers. What is meant by ‘private customers’?**

Private customers refers to all of the customers being legal or natural persons.